

Notice of Appeal was received by the Patent Office on June 12, 1997. An Appeal Brief is being filed concurrently herewith.

### **In the Claims**

Please amend the claims as follows:

106. The method of claim [104] 105, wherein the peptide comprises 50 amino acid residues or less.

133. The method as in any one of claims 103-113, wherein said composition is administered without adjuvant [in non-immunogenic form].

### **SUMMARY**

The above amendments are being made for the purpose of expediting prosecution of the above-referenced application. It is respectfully submitted that the amendments reduce the issues on appeal by obviating the rejections under 35 U.S.C 112, second paragraph and first paragraph, and correct improper dependency of claim 106.

### **The Amendment to Claim 133 Does Not Raise New Issues**

In the Advisory Action dated March 5, 1998, the Examiner states that the Second Amendment After Final filed December 12, 1997 has not been entered "as it would raise new issues or require additional consideration after final rejection". The Examiner further states that

[f]urther limitation of claim 133 to "without adjuvant" raises specific enablement issues with regard to methods or compositions not containing an adjuvant. By inference it raises additional issues with regard to the broader claims from which claim 133 depends, i.e., what effect, if any, the lack of an adjuvant (or the presence of one), would have.

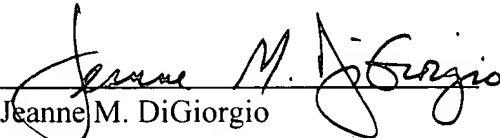
Applicants respectfully submit that new issues have not been raised with the amendment of claim 133 to recite "without adjuvant" instead of the term "nonimmunogenic form" as the term "nonimmunogenic form" as defined by Applicants and as searched and examined by the Examiner encompasses by definition, the species of "without adjuvant." Specifically, the term "non-immunogenic" as defined by Applicants in the specification at, for example, page 6, lines 23-31, means the composition is administered in a form in which down regulation of an antigen specific immune response results, in particular, and "comprises administration, in non-immunogenic form (e.g., without adjuvant)." Thus, as the term "non-immunogenic" as defined by Applicants encompasses the species "without adjuvant", a search of the term "non-immunogenic" necessarily included a search of the term "without adjuvant". As the Examiner has already considered the language "nonimmunogenic form" in the claims with regard to 35 U.S.C. §112, the amendment of claim 133 to recite the term "without adjuvant" does not raise new issues or require additional consideration after final rejection. In fact, the amendment of claim 133 reduces the issues for appeal by obviating the rejection of claim 133 under 35 U.S.C. §112, second paragraph and claims 103-144 under 35 U.S.C. §112, first paragraph.

### CONCLUSION

It is respectfully submitted that the rejections of record do not pertain to the newly amended claims and should be withdrawn. Amendment of the previously pending claims should in no way be construed as an acquiescence to any of the Examiner's rejections. Applicants reserve the rights to pursue the same or similar claims in this application or another application.

If a telephone conversation with applicant's attorney would expedite the prosecution of the above-identified application, the examiner is urged to call applicant's attorney at (617) 227-7400.

Respectfully submitted,

  
Jeanne M. DiGiorgio  
Reg. No. P41,710  
Attorney for Applicants

LAHIVE & COCKFIELD  
28 State Street  
Boston, MA 02109  
(617) 227-7400  
Dated: April 6, 1998